

Site Background

West Lake Landfill (the "Site"), Operable Unit No. 1, involves a remedial investigation/feasibility study ("RI/FS") being performed by Cotter Corporation (N.S.L.), Laidlaw Waste Systems (Bridgeton), Inc., Rock Road Industries, Inc. and the U.S. Department of Energy.

In 1966, the Atomic Energy Commission ("AEC") sold 8,700 tons of leached barium sulfate, together with other radioactive residues, to Continental Mining and Milling Company ("Continental Mining"). The radioactive residues were generated as by-products of uranium processing performed by the AEC's contractor. These processing residues were stored at the AEC's St. Louis Airport Storage Site ("SLAPSS"). Continental Mining moved the radioactive residues to its facility at 9200 Latty Avenue in Hazelwood, Missouri. Eventually, Cotter purchased the radioactive residues and shipped all but the 8,700 tons of leached barium sulfate to its processing facility in Colorado.

In 1973 approximately 8,700 tons of radioactively contaminated leached barium sulfate residues were mixed with approximately 39,000 tons of soil, and the entire amount was disposed of in two areas of the Site. This material resulted from decontamination efforts undertaken by Cotter at 9200 Latty Avenue, St. Louis, Missouri, where the residues had been stored. Studies have indicated that these two areas of the landfill are contaminated with uranium-238, uranium-235, thorium-230 and radium-226. In addition to the radioactive materials in the landfill, groundwater at the Site is also contaminated with radioactive materials as well as other hazardous substances.

In 1993 EPA entered into an Administrative Order on Consent ("AOC") for the performance of an RI/FS at the Site. As indicated above, Cotter Corporation (N.S.L.), Laidlaw Waste Systems (Bridgeton), Inc., Rock Road Industries, Inc. and the U.S. Department of Energy were signatories to this AOC.

Allocation Support

To date the four respondents to the AOC have shared the cost of work equally. While this allocation has worked for the RI/FS phase of the work, the upcoming remedial design/remedial investigation ("RD/RA") will be substantially more costly, and some of the parties may have difficulty paying a 25% share. The RI/FS is still underway, so no Record of Decision ("ROD") has been issued and it is not expected that a ROD will be issued before this allocation process is complete.

Despite the absence of projected remedial costs, both the PRPs and DOE are willing to proceed with an allocation effort. In particular, DOE seeks a greater degree of certainty in its budget planning process, and along with the PRPs may see allocation as an opportunity to adopt more equitable basis for its liability than the current per capita scheme.

On December 5, 1996, a meeting of the St. Louis Site Task Force meeting was held in St.

Louis, Missouri, which was attended, inter alia, by DOE Assistant Secretary Thomas Grumbley, EPA Region VII's Administrator, as well as various other representatives of DOE, EPA, the State of Missouri, the City and County of St. Louis and staffers from interested Congressional offices in the state and affected district.

At this meeting DOE Assistant Secretary Grumbley announced that with regard to West Lake Landfill OU-1, EPA would "allocate the responsibility at the site as best as it can over the *next six months or so*, so that they can tell us what percentage of the responsibility that [DOE] needs to take" (*Italics added*)

As any allocation of responsibility that EPA may prepare, such as a non-binding allocation of responsibility, may expose EPA to charges of favoritism as DOE is a sister federal entity. Discussions were held among the four identified potentially responsible parties ("PRPs") regarding how best to conduct an allocation. It was agreed that using a third-party neutral allocator would best serve the interests of the parties and satisfy EPA's desire to maintain neutrality.

Additionally, the private party PRPs, Cotter Corporation (N.S.L.), Laidlaw Waste Systems (Bridgeton), Inc. and Rock Road Industries, Inc. have requested that in any allocation performed the allocator give consideration and possibly allocate some responsibility to an "orphan." The orphan is B&K Construction Company, which acted as the transporter of the radioactive materials for Cotter Corporation. It has been alleged that B&K actually chose the Site for disposal of the wastes, although there appears to be some conflicting information on this.

Therefore, In order to accomplish the allocation, EPA would envision starting as soon as practicable in order to meet the six-month deadline mentioned above, that is, six months from the Task Force meeting, or May 5, 1997. While that may be ambitious, EPA still envisions that the parties would be substantially involved in the process or nearly complete in their efforts by that date.

The process would involve allocation, with the four PRPs, plus EPA as a party to represent the "orphan" share mentioned above. An initial convening meeting is expected, with several additional one-day meetings with all parties in attendance to follow until resolution.

Appropriate shares for costs may include consideration of PRP ability to pay issues, as driven by a range of estimated costs for various likely, but as yet not selected, remedial alternatives. Additional costs or liabilities to throw into the mix may include credit for past contributions under the per capita allocation scheme, EPA's "orphan" share contribution in the form of forgiveness of oversight costs, or other mechanisms or sources that may come forward as the allocation proceeds. EPA would expect that the convening phase of the allocation would resolve many of these issues to further clarify what the parties expect from the process.

Scope of Work

A. Preliminary Work

1. The contractor shall select an allocator professional to act as convener and allocator for this process in consultation with the Project Officer (PO) and Delivery Order Project Officer (DOPO).
2. The allocator professional shall meet with the EPA PO and DOPO and members of EPA's team to discuss substantive and procedural issues and define potentially involved interests and parties. At this meeting EPA representatives will provide more detailed information with regard to the goals and outcomes expected of the process, list of potential parties to be included in the process and a list of issues to be addressed through the process.
3. The contractor shall submit a workplan to EPA in accordance with the requirements of this contract.
4. The contractor shall be responsible for oversight of deliverables on this delivery order and shall be responsible for transmission of monthly reports and invoices as required by the contract.

B. Convening Activities

1. In consultation with the EPA DOPO, the contractor shall identify and contact the affected parties to discuss the goals and purpose of the proposed allocation process, as well as the technical or substantive issues involved in the allocation process.

The contractor shall contact parties identified by the EPA DOPO as "key parties" first. If no barriers to an allocation process are identified, the contractor shall proceed to contact all parties.

If initial contacts with the key parties reveal that an allocation process is not feasible, the contractor shall notify the EPA PO and DOPO, explain the difficulties (lack of interest, unequivocal opposition of a key party, disagreement about the definition of the problem, wrong forum or process, etc.) and await EPA's decision on whether to proceed with the allocation process.

2. The contractor shall provide oral reports weekly to the DOPO on the general progress of the convening effort.
3. The contractor shall provide one copy of the draft convening report to the EPA Project Officer and five copies to the DOPO. The report will:
 - a. Summarize the results of convening contacts including such things as:
 - (1) what parties were contacted during the period; and
 - (2) identification and a discussion of those issues which the parties agree will

be considered as part of the allocation process, and well as those issues which the parties choose not to have addressed in the allocation process.

- b. A discussion of the chances of a successful allocation process and the goals and purpose of the process from the viewpoints of the parties affected;
- c. Recommendation of potential additional parties that should also participate in the consultative process.
- d. If an allocation process appears to be feasible, the report shall include a design for the process including such things as:
 - (1) the structure and type of meetings between/among the allocator professional and affected parties;
 - (2) the expected number, length, location and frequency of meetings;
 - (3) the research, data or information necessary prior to, or during the process;
 - (4) the estimated budget for the process as designed and proposed by the contractor; and
 - (5) whether an orientation session is recommended prior to the first meeting.
- e. If a consultative process is not recommended, the contractor may suggest other processes that could accomplish some of EPA's goals.

The PO and DOPO will review the draft convening report and provide comments and revisions as necessary. The contractor will prepare the final report incorporating the PO's and DOPO's comments and revisions.

The contractor shall distribute the final report to the PO (2 copies), the DOPO (5 copies) and to each of the parties interviewed for the report.

- 4. If EPA decides to proceed with the allocation process, the contractor shall assist it in contacting potential parties to obtain commitments to participate in the allocation process.
- 5. As a part of the convening effort, the contractor may arrange for and facilitate an initial organizational meeting of the parties to discuss the form of the process and the parties to be involved, to get commitments to go forward from each of the parties, discuss the issues involved, and/or the ground rules for the process.

C. Allocation

This phase will implement the design of the allocation process as accepted by the EPA

DOPO and PO based upon the final convening report recommendations.

1. The contractor shall propose an initial draft of operational ground rules. At the initial meetings, the contractor shall assist the group in further developing and refining the ground rules or operating procedures of process.
2. The contractor shall provide a draft agenda to the PO and DOPO for each meeting. Upon receipt and incorporation of the PO's and DOPO's comments, the contractor shall distribute the final agenda to the PO, DOPO and participants in the allocation process.
3. The contractor shall facilitate all plenary, subcommittee and workgroup sessions. As facilitator the contractor shall assist participants in articulating their interests, identifying areas of agreement, and developing consensus solutions to the problems that divide them. As facilitator, s/he shall keep the parties talking, listening, and moving - as much as possible - towards the goal of the process.
4. The contractor shall communicate in person, by phone or in writing with process participants to ensure that issues and concerns have been communicated accurately and that all participants are adequately prepared for the next meeting.
5. The contractor shall provide draft meeting summaries to the PO, DOPO and the participants. Upon receipt and incorporation of comments, the facilitator shall distribute final meeting summaries to the PO, DOPO and participants.
6. The contractor shall provide meeting facilities and support for all meetings.
7. The contractor shall furnish a draft final report of the allocation process to the PO (one copy) and DOPO (five copies). The contents shall include:
 - (a) A two page executive summary of the process including the background, the issues discussed, and the resolutions of the issues;
 - (b) Final meeting summaries with relevant and necessary attachments;
 - (c) Copies of all documents compiled by the allocator during the allocation process;
 - (d) Relevant substantive correspondence between the allocator and the participants and between the participants themselves (if available to the allocator); and
 - (f) A process evaluation by the allocator summarizing results of the process, analysis of issues and balance of parties, procedural lessons learned, and recommendation for improvements.

The PO and DOPO will review the draft final report and provide comments and revisions as necessary. The contractor shall prepare the final report incorporating its comments and revisions. The contractor shall provide 2 copies of the final report to the PO, and 5 copies to the DOPO,

and one copy to each party involved in the process.